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Zulham Alief

Dear Prof./ Assoc Prof./ Dr./ Sir/ Mdm/ Ms.,

ACCEPTANCE OF ABSTRACT FOR SEMINAR PENYELIDIKAN KEWANGAN DAN KEHARTAAAN ISLAM (SPEKKI13)

Thank you for your interest in our conference. The organizer is pleased to inform you that your abstract entitled "*The Regulation of Halal Products to Moslem Consumer Protection in Indonesia*" has been accepted to be presented in Seminar Penyelidikan Kewangan dan Kehartaan Islam (SPEKKI13), which will be held on 19th - 20th February 2013, organized by the Department of Shariah and Law. Nevertheless there are some comments from the seminar's expert panelist for your consideration as per below:

- 1) *Perbahasan tentang CAC/GL 24-1997 tidak perlu dinyatakan di dalam abstrak kerana ia bukan fakta kajian.*

To expedite the publication of the proceeding please submit your complete paper by the end 31st December 2012. Attached is the guideline for the writing up of the full paper for your attention. You may want to consider the expert panelist comments when submitting the full paper.

We look forward to receiving your full paper and meeting you at the seminar. Should you have any further queries, feel free to correspond to Seminar Secretariat at the following address:

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Thank you.

Sincerely,

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Jabatan Syariah Dan Undang-Undang,
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THE REGULATION OF HALAL PRODUCTS TO MOSLEM CONSUMER PROTECTION IN INDONESIA

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Abstract

Act No. 8 of 1999 on Consumer Protection had not fully provided protection against Moslem consumers to obtain halal products, because the regulation is voluntary and not compulsory (*mandatory*). While the bill of Halal Product Warranty, still debating in House of Representatives about the institutional and implementation of halal product guarantee. This study presents how the regulations of halal products to protect Moslem consumer, which are presented with juridical normative methods. Some doctrine of Islamic economic law regulate the protection of Moslem consumers, including; obligation to take *halalan* and *thayyiban* foods, the right to choose (*khiyar*), prohibition to hide product defects (*ghisyah*) and reduced dose (*tathfiif*). Then the halal certification and labelitation will be examined in this study using the *al-mashlahah* theory.

Key Word: Regulation, Halal Products, Moslem Consumer Protection,

A. INTRODUCTION

1. Background

Lard case that occurred in 1988,¹ originated by Tri Susanto's research publications (Lecturer in Food Technology from Brawijaya University, Malang) in January 1988 issued by Canopy bulletin, on some foods and beverages are suspected by lard.² Further circulated a copy of a list of hundreds of products (which are not listed in the bulletin) is suspected to contain lard; consequently the Moslem-majority Indonesia became restless.³

¹The lard case in 1988 was at the earlier momentum LPPOM MUI. Recognizes its responsibility to protect the public, then the MUI LPPOM founded on 6 January 1989, in an effort to give people peace of mind in keeping halal products circulating on the community. [http://www.halalmui.org/newMUI/index.php / main/go_to_section/2/31/page](http://www.halalmui.org/newMUI/index.php/main/go_to_section/2/31/page), downloaded on March 12, 2012

²http://www.halalmui.org/newMUI/index.php / main/go_to_section/2/31/page, downloaded on March 12, 2012

³Republika, on January 12, 2001. One of them is lard case on Dancow milk, Moslem consumers doubt missing after the Indonesian Ulama Council (MUI) said that product is halal, and demonstratively drink the milk. See As'ad Nugroho, *Mencari Keadilan, Bunga Rampai Penegakan Hak Konsumen*, Jakarta: PIRAC, 2001, p. 33

PT. Ajinomoto Indonesia, Tbk. has been discovered by Institute for Food, Drugs and Cosmetics (LPPOM) of Indonesian Ulama Council (MUI) using elements of the pig enzyme on its halal certificate renewal.⁴ Using enzymes *bactosoytone*⁵ as food for microbes used in the fermentation process of molasses, which is the process of making *bactosoytone* using *porcine* enzyme⁶ are taken from the pigs *pancreas*^{7,8}. Finally MUI issued a fatwa haram against flavoring products (*Monosodium Glutamate*, MSG) from PT. Ajinomoto Indonesia using *bactosoytone*,⁹ next MUI asking people not to consume Ajinomoto.¹⁰ On January 6, 2011, PT. Ajinomoto Indonesia, Tbk. was nominated as the first MSG manufacturer to apply Halal Assurance System (HAS), which starting to be implied in 2005.¹¹

Cases of meningitis vaccine¹² which revealed South Sumatra of LPPOM MUI in April 2009, then followed up by LPPOM MUI along with various parties, concluded that the meningitis vaccine Glaxo Smith Kline (GSK) of Belgium at the beginning of the making process contact with the pig enzyme.¹³ Up to 2010, Indonesian pilgrims got the

⁴Ma'ruf Amin, et al. *Himpunan Fatwa Majelis Ulama Indonesia*, Jakarta: Sekretariat MUI, 2010, p. 621.

⁵*Bactosoytone* is a media used for bacterial growth, see Umar Anggara Jenie, *Diagram Proses Pembuatan MSG*, <http://media.isnet.org/islam/Etc/MSG.html>, downloaded May 18, 2012

⁶*Porcine* enzyme is a mixture of enzymes derived from pig *pancreas* extracts, plant extracts, and other enzymes. <http://media.isnet.org/islam/Etc/Jenie.html>, downloaded May 18, 2012

⁷The pancreas is a gland located in the abdomen and is an integral part of the digestive system. <http://pathology.jhu.edu/pc/BasicOverview1.php>, downloaded June 13, 2012

⁸Tempo, January 21, 2001, p. 4.

⁹MUI's Fatwa on Flavor Products (*Monosodium Glutamate*, MSG) from PT. Ajinomoto Indonesia, which using the *bactosoytone* on December 16, 2000

¹⁰As a result of Moslems consumer distrust in Indonesia, PT. Ajinomoto withdraws his products from the Indonesian market estimated at 2,000 to 3,000 tones. Media Indonesia, January 4, 2001, p.11. The news spread out about Ajinomoto case in Indonesia is making Ajinomoto Co. Inc. stock price in Japan slumped. On Tuesday afternoon January 9, 2001 trade of the Ajinomoto's value stock only 1,194 yen. Then down through the boundaries of 200 yen, down 14% compared with the previous close. Ajinomoto stock price decline was due to concerns over issues affecting PT. Ajinomoto Indonesia spread to other countries. See Kompas, January 6, 2001, p. 1.

¹¹LPPOM MUI, *Jurnal Halal*, No. 88 Edisi Maret-April Th. XIV 2011, p. 19

¹²Meningitis vaccine is a vaccine must be given to the prospective pilgrims at least 10 days prior to departure in order to protect the risk of contracting *meningococcal meningitis*, which is an infection that occurs in the lining of the brain and spinal cord and blood poisoning. Bacteria found in areas endemic *meningococcal meningitis* include Africa, North America, Latin America, and New Zealand. During the Hajj season, pilgrims will meet with residents from various countries who may be carriers of bacterial meningitis. <http://health.kompas.com/read/2011/04/28/20264298/Kenapa.Vaccination.Meningitis.Penting.buat.jamaah.haji>.

¹³LPPOM MUI, *Jurnal Halal*, No 86 Edisi November-Desember Th. XIV 2010, p. 10

meningitis vaccine Glaxo Smith Kline (GSK) for emergency manner, and the meningitis vaccine unknown yet that are substances not exposed to pigs.¹⁴ In July 2010, MUI issued Halal Certificate¹⁵ for meningitis vaccine Novartis production from Italy and Zhejiang Tianyuan from China, then the fatwa which allows the use of meningitis vaccines that contain pig due to an emergency manner, to be no longer valid.¹⁶

The circulation of products some of them founded prohibited (*haram*) for Moslem consumers i.e.: *Sapi Gelonggong*¹⁷ was founded by LPPOM MUI with Veterinary Office in Boyolali, Central Java in 1999. The pork case which is famous as *cow-pig* case, was smuggled from Sumatra to Java, are smeared with cow blood to deceive consumers founded in Greater Jakarta in 2000, the selling price of this meat is cheaper than beef that attract shoppers, consequently the sale of beef dropped drastically.¹⁸

In April 2009, Indonesia National Agency of Drug and Food Control (NA-DFC/BPOM) founded five brands of shredded and beef jerky positively contain element of pig, i.e.: (1) Beef Jerky Head Cap 250 grams (producer unknown), (2) Shredded and beef jerky Cap Limas 100 grams (producer fictive); (3) Shredded and beef jerky Cap ACC (producer unknown), (4) Beef Jerky Cap Lezaat (produced by MDC Food Surabaya), and (5) Special beef jerky No. 1 Cap 999 (produced by S. Hendropurnomo, Malang).¹⁹ In December 2012, Moslem consumers of Indonesia again restless after the circulation of meatballs (*bakso*) mixed with pork. Jakarta Police raided a kiosk who selling pork meatballs -in Damai Street, North Cipete Village, Kebayoran Baru, South Jakarta- and found 50 kg of pork that has been treated with 15 kg flour.²⁰

¹⁴<http://kesehatan.kompas.com/read/2010/07/21/03395385/Vaksin.Meningitis.Halal>, downloaded on February 18, 2012

¹⁵Fatwa Council of Ulama Indonesia Number 06 Year 2010 regarding the Meningitis Vaccine Usage For Hajj or Umrah on July 16, 2010

¹⁶LPPOM MUI, *Jurnal Halal*, No 86 Edisi November-Desember Th. XIV 2010, p. 8

¹⁷*Sapi Glonggong* is a form of animals torture which will slaughtered by spraying much water into the cow' stomach, with the aim that the beef sold at heavily increased.

¹⁸[http://koran.republika.co.id/berita/20930/Hasil hasil Kajian tentang Halal Haram](http://koran.republika.co.id/berita/20930/Hasil%20hasil%20Kajian%20tentang%20Halal%20Haram), downloaded on December 16 201. See also Anton Apriyantono and Nurbowo, *Panduan Belanja dan Konsumsi Halal*, Jakarta: Kairul Bayan, 2003, p. 9-10

¹⁹<http://nahimunkar.com/339/lingkaran-kasus-dendeng-dan-abon-babi/>, downloaded on January 8, 2012

²⁰<http://news.detik.com/read/2012/12/16/060701/2119619/10/kasus-bakso-babi-pemerintah-harus-proaktif-lindungi-konsumen>, downloaded on December 20 2012.

These facts raise awareness of Moslem consumers on halal products, this is proved by some of the survey, i.e.: (1) A survey conducted by LPPOM MUI in 2000 when the pork mixing into beef, the results showed that 85% of consumers are very concerned about the halal meat.²¹ (2) A survey conducted by LPPOM MUI in 2005, showed that 77% of respondents are very concerned about halal food to be consumed, even concern for the imported products reaches 90%.²² (3) A survey conducted by Frontier to Moslem consumers, showed that 82.6% of consumers want inclusion halal labeling of food, so that consumers can distinguish between products are clearly halal or not.²³ (4) A survey conducted by LPPOM MUI in 2009, showed Indonesian public awareness on halal products reached 70% and increased up to 92% in the end of 2010.²⁴

The circulations of products that are exposed by prohibition elements provide a legal issue for Moslem consumer protection in Indonesian. State must give his regulation to protect Moslem consumers to obtain halal products, so that the rights of religiosity guaranted by the Indonesian constitution.²⁵ Indeed, the House of Representatives is working together with the Government to draft a Bill of Halal Product Warranty, but the bill is still in debatable in institutional and implementation guarantees of halal products in Indonesia.

2. Purpose

This study aims to find the concept of the halal products regulation to role of Moslem consumer protection in Indonesia. Islamic law as a source of law in Indonesia can be applied in Moslem consumer protection in Indonesian.

3. Research Methodology

This study uses a juridical normative methods with use regulation approach (*statutory approach*), which is presented with qualitative methods. Juridical normative methods use to analyze the legal principles and norms of Moslem consumers protection

²¹LPPOM MUI, *Jurnal Halal*, No 34 Oktober 2000, p. 8-13

²²LPPOM MUI, *Jurnal Halal*, No 57/X/2005, p. 8-11

²³Tri Susanto, *Fakta dan Idealisme atas Implementasi Sertifikasi Halal Produk Pangan di Indonesia*, paper presented at the seminar of Moslem Consumers Foundation, Jakarta on 1-2 March 2002; in Sopa, *Sertifikasi Majelis Ulama Indonesia: Studi atas Fatwa Halal MUI terhadap Produk Makanan, Obat-obatan, dan Kosmetika*, Jakarta: Disertasi UIN Syarif Hidayatullah, 2008, p. 5

²⁴LPPOM MUI, *Jurnal Halal*, No 90 Edisi Juli-Agustus Tahun XIV 2011, p. 9

²⁵Republic of Indonesia Constitution of the Year 1945, Article 29

contained in the al-Quran, Hadith, Islamic legal doctrine, as well as other legal doctrines such as the legal doctrines and norms contained in regulations of Indonesia. Regulation approach (*statutory approach*) is done to analyzing the legislation relating to halal products and Moslem consumer protection, i.e.: Republic of Indonesia Constitution of the Year 1945, Act No. 8 of 1999 on Consumer Protection, Government Regulation No. 69 Year 1999 on Labeling and Advertising of Food, etc. Data is analyzed by qualitatively, which is in-depth analyzing, holistic, and comprehensive to find the concept of halal products regulations to Moslem consumer protection in Indonesia.

B. DISCUSSION

1. Islamic Concept of Consumption

The consumption in Islam, in addition to fulfilling the needs and life sustain, also to reflects the pattern of relationship between himself and God, that every consumption is a manifestation of remembrance (*zikir*) on behalf of God.²⁶ Islam prohibit to consumes unlawful (*haram*) product, because consumption in Islam is not only based on rationalism alone, but also based on the spiritual aspect,²⁷ social and environmental.²⁸ God commanded to eat lawful (*halalan*) and good (*thayyiban*) foods as a form of devotion. The fundamental idea in Islam consumption is not as a focus throughout the activity, but the consumption should be obtained and used to obtain the highest degree of obedience to God. His words:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُلُوا مِن طَيِّبَاتِ مَا رَزَقْنَاكُمْ وَذْكُرُوا لِلَّهِ الَّذِي هُوَ أَوْلَىٰ بِمَتَاعِ الْحَيَاةِ الدُّنْيَا ۚ﴾

Meaning: O ye who believe! Eat of the good things wherewith We have provided you, and render thanks to Allah if it is (indeed) He Whom ye worship. (QS Al-Baqarah 2: 172)

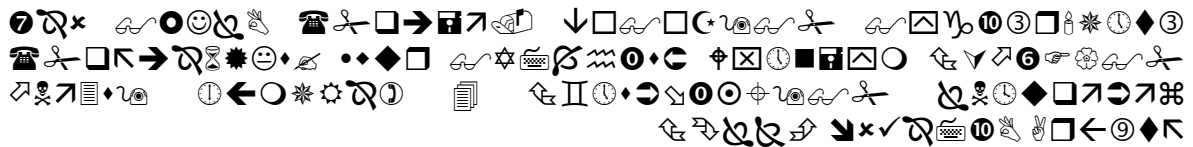
²⁶Monzer Kahf, *Ekonomi Islam*, Yogyakarta: Pustaka Relajar, 1995, p. 36. See also Rustam Effendi, *Produksi dalam Islam*, Yogyakarta: Megistra Insania Press, 2003, p. 11-13

²⁷Rationalism in Islam is not only based on impulse reason alone, but also on the values of divinity. Azhari Akmal Tarin, et al, *Dasar-dasar Ekonomi Islam*, Bandung: Citapustaka, 2006, p. 279

²⁸Muhammad Muflih, *Perilaku Konsumen dalam Perspektif Ilmu Ekonomi Islam*, Jakarta: Raja Grafindo Persada, 2006, p. 16



Meaning: So eat of the lawful and good food which Allah hath provided for you, and thank the bounty of your Lord if it is Him ye serve. (QS An-Nahl 16: 114)



Meaning: O mankind! Eat of that which is lawful and wholesome in the earth, and follow not the footsteps of the devil (Satan); because he is an open enemy for you. (Al-Baqarah 2: 168)

In Islam, consumer protection law refers to the concept of lawful (*halal*), unlawful/prohibited (*haram*) and economic justice, based on the values and principles of Islamic economics.²⁹ Islamic economic activity in the consumer protection includes protection against the substance, process of production, distribution, production goals, until the result of consuming these products. So in an Islamic economy, *halal* products in terms of substance may be unlawful (*haram*), in case the way of produce and consume purposes violate the provisions of Islamic law (*shara*’).³⁰

Actually, all foods and beverages are lawful, except those forbidden by Islamic law.³¹ Islam stipulates that the origin of all everything created by God is lawful (*halal*) and permissible (*mubah*),³² nothing is forbidden except what is mentioned by the authentic texts (*nash*). Thus the prohibition (*haram*) region in Islamic law is quite narrow, then compared with the lawful (*halal*) region is vary vast. Because the texts which prohibite is few, while about something that is not contained in the *texts* (both lawful and which prohibit) means keeping in the original law is permissible (*mubah*), and included in the region that forgiving

²⁹Muhammad and Alimin, *Etika dan Perlindungan Konsumen dalam Ekonomi Islam*, Yogyakarta: BPFE, 2004, p. 132

³⁰Jaribah bin Ahmad al-Harithi, *Fikih Ekonomi Umar bin al-Khathab*, Translated by Asmuni Solihan Zamakhsyari, Jakarta: Khalifa, 2008, p. 138

³¹Al-Baqarah 2: 173, Al-Baqarah 2: 219, Al-Maidah 5: 3, Al-A’raf 7: 157. See also Departemen Agama RI, *Petunjuk Teknis Pedoman Sistem Produksi Halal*, Jakarta: Direktorat Jenderal Bimbingan Masyarakat Islam dan Penyelenggaraan Haji, 2003, p. 9-12

³²Al-Baqarah: 29, Al-An`am: 119

from God,³³ the doctrine is الأشياء الإباحة (everything was originally is permissible).³⁴

But that does not mean cause of everything is basically *permissible*, then the humans have an authority to justify and forbid everything. Islam has limited the authority to justify and to forbid by the only God³⁵ with the principle (التحليل و التحريم حق الله وحده).³⁶ The Qur'an strongly condemns the *mushrikeen* who forbid the good things without permission of Allah.³⁷ God emphatically deny those who forbid something lawful or otherwise justify the unlawful.³⁸ Thus, forbid the lawful and justify the unlawful same by doing *syirik*, with principle تحريم الحلال و تحليل الحرام قرين الشرك الله.³⁹

2. Islamic Doctrine on Consumer Protection

As an ordinary man, since his childhood the Prophet has been active as traders and businessmen,⁴⁰ in adulthood the Prophet were carrying Khadijah's commodity to get rewards.⁴¹ The Prophet had laid the foundations of consumer protection in Islam. Attitude, honesty, fairness, business responsibility, and product liability has demonstrated when he to be entrepreneurs. From his trades activity we can find the legal principles of consumer's protection aspects.⁴²

³³It was narrated from Salman al-Farisi: *Rasulullah* was asked about the butter, cheese, and wild asses, and he replied: "The *halal* is what Allah made lawful in His Book, and the *haram* is what Allah has forbidden in His Book, but that which is silenced by His means forgiven you". (HR Tarmidzi and Ibn Majah)

³⁴Yusuf Qaradawi, *Halal dan Haram*, Translated by Abu Sa'id al-Falahi, Jakarta: Rabbani Press, 2003, p. 20

³⁵Ash-Shura: 21, Yunus, 59, An-Nahl: 116, Al-An'am: 119

³⁶Yusuf Qaradawi, Op. Cit, p. 24-26

³⁷Al-Maidah 103-104

³⁸Al-A'raf: 32-33, Al-Maidah: 87-88

³⁹Yusuf Qaradawi, Op. Cit, p. 27-29. That principles clearly explain that halal products are a form of protection and fulfillment Moslem consumers of human rights. Republika, on November 1, 2011, p. 12

⁴⁰When twelve years old, it is related to Muhammad accompanied his uncle and patron Abu Talib on a caravan journey to Syria, in the course of which he met a Christian monk to whom legend has given the name Bahira. Philip K. Hitti, *History of the Arabs*, Macmillan Student Edition, Tenth Edition, 1970, p.111

⁴¹Rizqullah Mahdi Ahmad, *Biografi Rasulullah, Sebuah Studi Analisis Berdasarkan Sumber-sumber Otentik*, Jakarta: Qisthi Press, 2009, p. 152. See Afzalur Rahman, *Muhammad Sebagai Seorang Pedagang*, Jakarta: Swarna Bhumi, 2000, p. 14. See also Sami bin Abdullah al-Maghlust, *Atlas Perjalanan Hidup Nabi Muhammad*, Jakarta: Al-Mahira, 2009, p.65-67

⁴²His honesty, fairness and integrity very potentially for improving his reputation and ability in the trade. Because of the honesty and achievement, the Prophet successful to sell Khadijah's commodity with more benefit than anyone else has ever done before. Jusmaliani, *Bisnis Berbasis Syari'ah*, Jakarta: Bumi Aksara, 2008, p. 49. See also Muhammad Husein Haekal, *Sejarah Hidup Muhammad*, Jakarta: Tintamas, 1984, p. 72

The concept of economic and trade in Islam based on the values and ethics of honesty and fairness.⁴³ After the Prophet migrated (*hijrah*) to Medina, a variety of unfair economic principles have been deleted and banned. Such as speculation, collusion, oligarchy, cancellation of important information about the product, or misleading information.⁴⁴ Trade are prohibited after the Prophet migrated to Medina include; *gisyah*,⁴⁵ *najasy trade*,⁴⁶ *haram products*,⁴⁷ *riba*,⁴⁸ and *tathfif*.⁴⁹

The trade principles are taught by the Prophet contains the consumer protection values. Although at that time the term of "consumer" has been unknown yet, but Islam protects the consumer's rights from unfair trades,⁵⁰ giving the right to safety and health,⁵¹ the right to choose,⁵² and the right to advocacy and dispute resolution.⁵³ In the Islamic economy, consumers are controlled by five basic principles that is the principle of; truth, hygiene, simplicity, benefit, and morality.⁵⁴

⁴³Jusmaliani, *Op. Cit.*, p. 55. See also Ikhwan Hamdani, *Sistem Pasar, Pengawasan Ekonomi (Hisbah) dalam Perspektif Ekonomi Islam*, Jakarta: Nur Insani, 2003, p. 28

⁴⁴Muhammad Akram Khan, *Ajaran Nabi Muhammad SAW tentang Ekonomi*, Jakarta: Bank Muamalat, 1996, p. 151

⁴⁵Hiding defective goods for sale, it could be a defective product mix into higher quality goods, so consumers will difficult to know exactly the quality of goods, and the sellers will get a high price for the defective goods or poor quality. Whereas, in essence consumers need clear information about the quality of the goods that he would buy.

⁴⁶Trade in which somebody posing as buyers who bid high prices for goods by unnatural praise, with aim to raise the price of goods. Abul Futuh Shabiri, *Sukses Bisnis Berkat Wasiat Nabi*, Jakarta: Pustaka Al-Kausar, 2007, p. 56. See also Al-Imam Muhammad al-Shan'ani, *Subul al-Salam*, Mesir: Maktabah Zahran, tt, Juz 3, p. 22

⁴⁷The trading items that prohibited in the Qur'an and Hadist. Al-Baqarah: 173, 219. Al-Maidah: 3. Al-An'am: 145. An-Nahl: 115

⁴⁸Taking extra in transaction, savings and loans that a contrary to the economic principles in Islam. Al-Baqarah: 275, 276, 278, 279. Ali Imran: 130. Ar-Rum: 39

⁴⁹To reduce the scales or wight of goods to be sold, of course this practice is very detrimental for consumers. Al-Muthaffifin: 1-6

⁵⁰Hud: 85, Al-Shura: 181, 182, 183, Al-Rahman: 8, 9, and Al-Muthaffifin: 1, 2, 3

⁵¹Al-Maidah: 88. The lawful (*halal*) and good (*thayyib*) foods is also interpreted as the food tastes invite consumers and do not harm the physical and mind, in the Qur'an, the word *halal* is always followed by the *thayyib* word. Aisjah Girindra, *Pengukir Sejarah Sertifikasi Halal*, Jakarta: LPPOM MUI, 2005, p. 20

⁵²"The seller and the buyer have the right to choose as long as they have not be separated". See Al-Imam Muhammad al-San'ani, *Op. Cit.*, p. 33-35. Option (*khiyar*) in its absolute sense is the right given to both parties or to either one of them to confirm, cancel or back down from the contract. Ala 'Eddin Kharofa, *Transactions in Islamic Law*, Kuala Lumpur: AS. Noordeen, 1997, p. 91-142. See also Mohd. Ma'sum Billah, *Islamic Law of Trade and Finance, a Selection on Issues*, Gombak: Ilmiah Publisher, 2003, Second Edition, p. 25.

⁵³Al-Baqarah: 188

⁵⁴M.A. Mannan, *Islamic Economics, Theory and Practice*, Delhi: Idarah-I Adabiyat-I Delli, 1980, p. 80

Truth principle, to arrange the consumers to use goods that are permitted in Islamic law, from the substance, process, production, distribution, until consumption purpose.⁵⁵ *Hygiene principle*; based on Islam law must consumes a hygiene goods, not dirty, disgusting, and mixed with unclean goods. Those unclean and dirty goods give the harmful.⁵⁶ *Simplicity principle*, Islam provides standardization to moderation in consumption of goods, as well as able to restrain the passions from extravagancy.⁵⁷ Islam also teaches consumers to maintain a balance, not too stingy and not too much in consumption.⁵⁸ *Benefit principle*, that Islam permits the consumer to use the goods, as long as beneficial in devoting themselves to God. Islam also allows consuming unlawful (*haram*) goods if under emergency manner, as long as not excessive and exceeds the limit.⁵⁹ *Morality principle*, Islamic doctrines obligate every Moslem to do anything on the name of Allah, to fulfill ethics, modesty, gratitude, and override a disgraceful character in consume.⁶⁰

3. The Regulation of Halal Products

Consumer protection movement in Indonesia began and popular in the 1970s.⁶¹ Consumer protection movement initiated Indonesian Consumer Agency Foundation (non government organization).⁶² The great achievement of consumer movement in Indonesia when academic texts on Consumer Protection Act successfully brought to the House of Representatives, finally was passed into Act No. 8 of 1999 on Consumer Protection on 20 April 1999.⁶³

Implementation of Consumer Protection Act linked to the political democratization and reformation movement which is led by students, and is characterized by replacement of the Indonesian President from Soeharto to B.J. Habibie. The Consumer

⁵⁵Al-A'raf: 157

⁵⁶Al-Baqarah: 219; Al-Maidah: 90, and Al-An'am: 145

⁵⁷Al-An'am: 141, and Al-A'raf: 31

⁵⁸Al-Furqan: 67

⁵⁹Al-Baqarah: 173; Al-An'am: 119, 145, and An-Nahl: 115

⁶⁰Al-Baqarah: 177; Ali Imran: 191; Ibrahim: 7, and Al-Insan: 8

⁶¹Yusuf Shofie, *Perlindungan Konsumen dan Instrumen-Instrumen Hukumnya*, Bandung: Citra Aditya Bakti, 2003, p. 7 See also Munir Fuady, *Hukum Bisnis dalam Teori dan Praktek, Buku Kedua*, Bandung: Citra Aditya Bakti, 1994, p. 188.

⁶²Shidarta, *Hukum Perlindungan Konsumen Indonesia*, Jakarta: Grasindo, 2006, p. 48-52

⁶³Gunawan Widjaja dan Ahmad Yani, *Hukum Tentang Perlindungan Konsumen*, Jakarta: Gramedia, 2003, p. 16

Protection Act make by Parliament initiative to propose the draft, which has never been used in President Soeharto.⁶⁴

Religiosity in Indonesia has a ground norm that contained in the first principle of Pancasila (Five Principles) “Believe in the One Supreme God”, which further religiosity has regulated in Article 29 of the Constitution 1945; (1) The State based on Believe in the One Supreme God. (2) The State guarantees the freedom of each citizen to embrace their religion and to worship according to his/her religion or belief. Hazarin argue, that Article 29 of the Constitution 1945 contains norms; (1) In the state, should not happen anything contrary to rules of Islam, Christian, Hinduism, and Buddhism for their believers. (2) The state shall carry out the rules of religiosity for his/her believers, and that need the power of state,⁶⁵ especially economic (*muamalat*) aspects.⁶⁶

Baqir Sadr argue, that the comprehensive and generally power and authority given to the state to intervene the economic, as one of the fundamental principles are important in the Islamic economic system. State intervention is not limited to just adapt the rules of Islamic law permanent, but also to fulfill blankness in Islamic law.⁶⁷

Accordingly, the state must to protect Moslem consumers by firm regulations to obtain *halal* products, and must guarantee the citizen’s rights to access the *halal* products,⁶⁸ because the state should facilitate the citizens to apply his religion.⁶⁹ This regulation is not only for the benefit of Moslem consumers, but also takes in international trade which is requires solid regulations.⁷⁰

⁶⁴Yusuf Shofie, *Tanggung Jawab Pidana Korporasi dalam Hukum Perlindungan Konsumen di Indonesia*, Bandung: Citra Aditya Bakti, 2011, p. 10

⁶⁵Hazarin, *Demokrasi Pancasila*, Jakarta: Bina Aksara, 1985, p. 28-29. See Hazarin, *Hukum Baru di Indonesia*, Jakarta, Bulan Bintang, 1950, p. 1-10.

⁶⁶Mahsun Fuad, *Hukum Islam Indonesia, dari Nalar Partisipatoris hingga Emansipatoris*, Yogyakarta: LkiS, 2005, p. 78

⁶⁷Muhammad Baqir al-Shadr, *Buku Induk ekonomi Islam, Iqtishaduna*, Terjemahan Yudi, Jakarta: Zahra Publishing, 2008, p. 458

⁶⁸Plato argue, the state must have four *cardinal virtues*: wisdom, courage, discipline, and justice. (1) Wisdom related knowledge of the rules, (2) Courage related to the organizations and institutions of the state (*auxiliaries*), (3) Discipline related to harmony and balance between social groups as well as mutual agreement about who should be lead, and (4) Justice is the principle given by nature to all humans. Plato, *The Republic*, Ranlated by Desmond Lee, London: Pinguin Classics Group, 1987, p. 196

⁶⁹Uswatun Hasanah, LPPOM MUI, *Jurnal Halal*, No 90 edisi Juli-Agustus Tahun XIV 2011, p. 30

⁷⁰The relationship between consumers and producers in modern society becomes more complex than traditional society. Modern society creating mass production and mass consumption which is between

Even in secular and Moslem minorities' state regulation of *halal* products is important, Li-ann Thio explained to accommodate minorities, race and religion in society should be concern by constitutional and non-constitutional solutions, because it will build the economy within the nationality framework.⁷¹ Actually the products which are certified *halal* will be sales growth.⁷²

Regulations, interventions, and policies are needed on the claims of trust characteristic (Credence characteristic) product.⁷³ Where consumers cannot evaluate, validate, and test the *halal* products, even after consumed. Consumers only depend on the labels to know *halal* and quality of product, as signal of *credential* against the producers.⁷⁴ In contrast, *mislabeled credence* will erode consumer confidence into that product.⁷⁵

producer and consumer doesn't know. Whereas in traditional societies the relationship between consumers and producers is still simply, where they are still able to come face to face directly. Inosentius Samsul, *Perlindungan Konsumen, Kemungkinan Penerapan Tanggung Jawab Mutlak*, Jakarta: Universitas Indonesia, 2004, p. 2-3.

⁷¹Thio Li-ann, *Constitutional Accommodation of the Rights of Ethnic and Religious Minorities in Plural Democracies: Lessons and Cautionary Tales From Southeast Asia*, Pace University School of Law: Pace International Law Review, 2010, p.100-101

⁷²J.M. Regenstein, M.M. Chaudry, and C.E. Regenstein, *The Kosher and Halal Food Laws, Comprehensive Reviews in Food Science and Food Safety*, Institute of Food Technologists: 2002, Vol. 2, p. 112-113. The development of *halal* products in Netherlands domestic market is also quite large, that followed by the growth of the Moslem population in Netherlands is estimated in 2006 at 5% (837,000 peoples). In Netherlands there are 30-40 *halal* certificate such as the Halal Feed and Food Inspection Authority, Halal Quality Control, Halal Correct, and Halal Audit Company, and international certification bodies such as JAKIM, IFANCA, MUI and IHI Alliance. See Tety Havinga, *Regulating Halal and Kosher Foods: Different Arrangements Between State, Industry, and Religious Actors*, Erasmus Law Review: 2010, Vol. 3, p. 245-246. Some secular state have regulations of *halal* products, such as; Code of Maryland, title 14 Miscellaneous Consumer Protection Provisions, subtitle 36 Halal Food Products (14.36.01-04). New Jersey has enforce Law and Public Safety; Division of Consumer Affairs; Halal Food (13.45A-22.3 and 6) on May 2, 2005. Illinois also have Public Health; Halal Food Act (410.637:1,5,10,15,20). England in April 2012 has published the Food Law Practice Guidance contained Guidance for food law enforcement officers on halal food issues.

⁷³J. Howard Beales, *Health Related Claims, the Market for Information, and the First Amendment*, Health Matrix: Journal of Law-Medicine, 2011, p. 12. See also Tracey M. Roberts, *Innovations in Governance: A Functional Typology of Private Governance Institutions*, Duke Environmental Law and Policy Forum, 2011, p. 108

⁷⁴Ariel Katz, *Beyond Search Costs: the Linguistic and Trust Functions of Trademarks*, Brigham Young University Law Review, 2010, p. 1561

⁷⁵Nicole J. Olynk, Labeling of Credence Attributes in Livestock Production: Verifying Attributes which are more than "Meet the Eye", Journal of Food Law & Policy, 2009, p. 199. Omari Scott Simmons argue the *credence characteristic* including automobile servicing and health care. Omari Scott Simmons, *Corporate Reform as a Credence Service*, Journal of Business & Technology Law, Early Reflections on the Financial Crisis, 2010, p. 113. See also Omari Scott Simmons dan James D. Dinnage, *Innkeepers: a Unifying Theory of the In-House Counsel Role*, Seton Hall University School of Law: Seton Hall Law Review, 2011, p. 107-110. See also William P. Kratzke, *Tax Subsidies, Third-Party-Payments, and Cross-Subsidization: America's Distorted Health Care Markets*, University of Memphis Law Review; 2009, p. 330

Consumer protections are part of the welfare state implementation, in addition as political constitution the Constitution of 1945 can also be referred as an economic constitution that contains the welfare state idea. As an economic constitution, the Constitution 1945 should be understood as the highest economic policy and should be referenced in national economic development, and should be manifested in a statute and implementing regulations.⁷⁶

Argumentations of government intervention to consumer protection there are: (1) On modern societies, the producers offer a variety of mass products (*mass production*). (2) The products of mass production potentially of the defective, substandard, and dangerous products. (3) The relationship between consumers and producers is unequal and inharmonious. (4) Perfect competition to support consumer sovereignty theory in practice rarely happens.⁷⁷ Government intervention is needed in economic development,⁷⁸ to establish and enforce the regulation on economics (including Moslem consumer protection regulation), but if there is no it will cause economic distortions.⁷⁹ This argument holds that the economy can work properly if it has legal framework.⁸⁰

The regulation of *halal* products in Indonesia spread into some acts, such as: Act No. 8 of 1999 on Consumer Protection, Act No. 18 Of 2009 on Animal Husbandry and Animal Health, and Acts No. 18 of 2012 on Food. Article 8 letter h on Consumer Protection Law states: The producers are prohibited to produce and/or trade goods and/or services which are not corresponding to the stipulation of *halal* product, as *halal* statement in the label. Article 58 paragraph (4) on Animal Husbandry and Animal Health Law states: Animal products which are produce in and/or imported into the Republic of Indonesia for distribution should be folowed by vaterinaty and *halal* certificate. Article 58 paragraph (5) on Animal Husbandry and Animal Health Law states: Animal products which are exported from the Republic of Indonesia should be folowed by vaterinaty and *halal* certificate if

⁷⁶Jimly Asshiddiqie, *Konstitusi Ekonomi*, Jakarta: Kompas, 2010, p. xi

⁷⁷Inosentius Samsul, *Op.Cit*, p. 30

⁷⁸Bismar Nasution, *Mengkaji Ulang Hukum Sebagai Landasan Pembangunan Ekonomi*, Speech Inauguration Universitas Sumatera Utara, Medan: Universitas Sumatera Utara, 2004, p. 4

⁷⁹Didik J. Rachbini, *Ekonomi Politik, Paradigma dan Teori Pilihan Publik*, Jakarta: Ghalia Indonesia, 2002, p. 106

⁸⁰A. Sony Kerat, *Pasar Bebas, Keadilan dan Peranan Pemerintah*, Jakarta: Kanisius, 1996, p.186

required by the importer states. Article 69 letter g on Food Law states: Implementation of food safety conducted by *halal* products guarantee for recommendatory. Article 95 paragraph (1) on Food Law states: Central and Local Government to do the inspection on the implementation of guarantee *halal* products system for recommendatory on food.

The three acts which regulate *halal* products have different norm in their are implementation. The Act for Consumer Protection regulate *halal* products voluntarily, the Act for Animal Husbandry and Animal Health regulate *halal* products mandatorily, while the Act for Food regulate *halal* products mandatorily for recommendatory. Different of the norms will create disharmony among regulations that in turn will disadvantage consumers. The protection of Moslem consumer rights not as the attitude towards anti producers, but an appreciation of the consumer's universal rights,⁸¹ as well as the consumers also have the right to personal defenses.⁸²

The Government and the House of Representatives are drafting Bill of Halal Products Guarantee, to legitimize the *halal* certification system, but there is still a debate on implementation and authorization.⁸³ Gilles Grolleau and Sandos Benabid argues, implementation and authorization on *halal* products can be done; directly which the Government is directly involved in the structures and agencies, or indirectly which the Government delegate its role to a third party to implement the certification process.⁸⁴ Government intervention is useful to ensure *fair trading* by providing cognitive support to consumers, so as to change from the credence characteristics into search characteristics products. Because the market is dominated by credence characteristics product which will depend on the certification and labeling,⁸⁵ and Government intervention is required to provide protection to the citizens.⁸⁶

⁸¹Yusuf Shofie, *Perlindungan Konsumen, Op. Cit.*, p. 14. Economic activities without legal control will create various forms of corporate crime. Yusuf Shofie, *Pelaku Usaha, Konsumen, dan Tindak Pidana Korporasi*, Jakarta: Ghalia Indonesia, 2002, p. 12

⁸²Robert W. Emerson, *Business Law*, New York: Barron's, 2009, Fifth Edition, p. 218

⁸³Republika, Selasa 1 Nopember 2011, p. 12.

⁸⁴Gilles Grolleau dan Sandos BenAbid, Gilles Grolleau dan Sandos BenAbid, *Fair Trading in Markets for Credence Goods, An Analysis Applied to Agri-Food Products*, Jurnal Intereconomics, Edisi Juli/Agustus 2001, p. 209-214

⁸⁵Jeremy N. Sheff, *Biasing Brands*, Yeshiva University: Cardozo Law Review, 2011, p. 1303

⁸⁶*Government function, its function to protect the individual. As long as it is faithful to this pledge, the government cannot be denied its power but when it ceases to do it, its laws have no validity and the*

C. CONCLUSION

Consuming halal foods is worship for Moslems, which must be protected and facilitated by the Republic of Indonesia as stated in Article 29 of the Constitution. Halal certification and labeling is *al-mashlahah* (benefit) to prove halal products directly those are visible from credence characteristics into search characteristics. While for the implementation and authorization of halal products guarantee can be done directly and indirectly.

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